

Minutes of the Plan Commission – Town of Spring Green

November 14, 2017 - Spring Green Town Hall, E4411 Kennedy Road, Spring Green, WI 53588

Attendees: none

- 1. Meeting called to order by lausly at 7:03 pm.**
- 2. Roll call** Plan Commission members present: Fred lausly, Carla Carmody, Michelle Thomas, Kolby Hirth; excused: none; absent: Nate Robson
- 3. lausly attested that proper public notice had been made.**
- 4. Motion approving minutes for the October 10 meeting, October 21 site visit and October 24 special meeting by Carmody, seconded by Thomas. Motion carried.**
- 5. Motion approving agenda as posted by Thomas, seconded by Carmody. Motion carried.**

6. Updates & Communications:

- **Updates from JEZC on requirements for a zoning permit, conditions for accessory structures, and regulating junk**

An October 27, 2017 opinion letter from village attorney Allan Peckham regarding extraterritorial zoning jurisdiction (attached) was discussed. The village reviews zoning permits for setbacks and land use. The village has no applicable non-zoning authority in the ET and cannot condition issuance of a zoning permit on non-zoning issues. e.g. Town driveway permit, County septic permit or LWSRB riverway permit. The village can, however, amend its zoning application form to include information that a driveway permit, septic permit and LWSRB permit may be needed in the ET. The village zoning ordinance should be updated to reflect the opinion. Greg Prem will also review chapters 2.06 Floodplain and Shoreland Zoning in the Extraterritorial Areas and 2.08 Site Restrictions for the 12/13/17 meeting.

Review of the conditions for accessory structures continued. Ed Lilla will bring additional updates to the next meeting.

JEZC members will investigate regulation of junk within the ET and bring ideas to the December or January meeting. It was noted that village nuisance ordinance does regulate both junk and property maintenance within the village. The County has zoning jurisdiction outside the ET.

- **Update on issuance of driveway permit**

Installation of a culvert on Butternut Rd required a \$300 driveway permit for the Town Inspector to check the grade and draft a document verifying compliance with ordinance.

7. Business Items:

a. Comprehensive Plan update

Discussion continued on Elements 6 & 7. New items include the Town drainage ditch and the County ATV/UTV trail. Sauk County ordinance for non-metallic

mining (attached) was discussed. For next meeting lausly will bring copies of the updated working document with all proposed amendments to date.

8. Public comment: none

9. Next Meeting Date: January 9, 2018 at 7:00 pm, unless there is a request to be on the December 12, 2017 agenda.

10. Adjournment: Motion to adjourn by Carmody, seconded by lausly at 8:55 pm. Motion carried.

(Kolby Hirth, Secretary)

(Fred lausly, Chairperson)

LAW OFFICE OF
Allan C. Peckham

October 27, 2017

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Village Board
Village of Spring Green
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RE: Extraterritorial Zoning Jurisdiction

Dear Board Members:

My advice is requested with respect to the following: Can the Village adopt and enforce an ordinance that requires an applicant to obtain a Town Driveway Permit as a condition to the Village issuing a Zoning Permit in the ET?

The general rule is that absent an express grant of authority to enforce an ordinance extraterritorially, municipal ordinances have no effect outside the municipality's corporate boundaries. *Wisconsin's Environmental Decade, Inc. v. DNR* (1978) 85 Wis.2nd 518, 271 N.W.2nd 69.

In addition to zoning, there are a number of situations where the legislature has authorized a municipality to act extraterritorially. A village has extraterritorial plat approval and master plan authority. It can regulate offensive industries (out 4 miles), set standards for smoke emissions (out 1 mile) and establish navigation aids in outlying waters.

However, absent enabling legislation from the state, the authority of a municipal ordinance does not extend beyond the village limits.

- 1) The Village presence in the Town is limited to extraterritorial zoning. The Town cannot control or regulate the Village's zoning jurisdiction. Nor can the Village control or regulate the Town's non-zoning police power authority.
- 2) Whether the Village can enforce or require compliance with the Town's Driveway and Private Roads ordinances in the ET depends on whether the underlying Town ordinance is a zoning ordinance or a non-zoning police power ordinance.
- 3) Zwiefelkhofer v. Town of Cooks Valley (2012) 338 Wis.2nd 362, 809 N.W.2nd 488, is a Wisconsin Supreme Court case that analyzed in detail the characteristics and purposes of zoning and the difference between zoning ordinances and non-zoning licensing/police power ordinances.

The court listed the "characteristics that are traditionally present in a zoning ordinance". These include:

- (1) Dividing a geographic area into multiple zones or districts such as residential, commercial and industrial.
- (2) Establishing within districts certain allowed and prohibited uses.
- (3) Controlling *where* a use takes place rather than *how* it takes place.
- (4) Classifying uses in general terms and attempting to comprehensively address all possible uses in the district.
- (5) Ordinances that are forward looking as to what uses are permitted as opposed to case-by-case ad hoc determinations.
- (6) Allowing grandfathering despite failure to conform.

Page 3
Village Board
October 27, 2017

The purposes of zoning noted by the court include the "the separation of incompatible land uses", confining "certain classes of buildings and uses to certain localities" and to "comprehensively assign compatible land uses to districts throughout the community."

Based on Zwiefelkhofer, it is my opinion that the addition of the proposed described Driveway Permit requirement to the Village extraterritorial zoning ordinance is not an act of zoning. Rather it is a non-zoning police power regulation and is not enforceable by the Village in the ET. The Village has no applicable enforceable non-zoning authority in the ET and cannot condition the issuance of a Zoning Permit on the Town issuing a Driveway Permit.

Aside from the foregoing, I do not understand what purpose the proposed ordinance serves. The Town's Driveway and Private Roads ordinances are already in effect throughout the Town including the ET. Since a Town Building Permit requires a Town Driveway Permit and since a Town Building Permit cannot be issued in the ET before a Village Zoning Permit, what need exists for requiring a Driveway Permit be issued before a Zoning Permit?

If either the Zoning Permit or the Building Permit is denied, having obtained a Driveway Permit would become a waste of time and money. This may not be insubstantial given the requirements of the Town's Driveway and Private Roads ordinances. This is particularly so for new construction requiring a driveway permit where the Town does not issue a Building Permit until the driveway is constructed.

Sincerely,



Allan C. Peckham
Village Attorney